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Federal Communications Commission
Office of the Secretary
Marlene H. Dortch
445 12th Street, S.W.
Room TW-A325
Washington, D.C. 20554

RE **CG Docket 02-278**
Telephone Consumer Protection Act of 1991 (the "Act")

Dear Ms. Dortch:

We appreciate this opportunity to comment on the important issues raised in your September IS, LOO2 Notice of Proposed Rulemaking and Memorandum Opinion and Order (the "Proposal"). Household Bank (SB), N.A. ("Household") is one of the largest issuers of MasterCard and VISA credit cards in the United States. Household's principal bank card programs arc the GM Card. a co-branded product offered in conjunction with General Motors, and the Union Privilege credit card program, an affinity program offered in conjunction with the AFL-CIO. In addition, through its Household Bank and Orchard Bank branded programs, Household offers credit cards to middle-market Americans undcrscrvcd by traditional credit card providers. Household makes its credit card products available via mail, telephone, the internet and partnership marketing. Household's credit cards are serviced by its affiliates, Household Credit Services, Inc. and Household Credit Services (II), Inc.

INFORMATION ABOUT BUSINESS UNIT.

Household and its affiliates maintain approximately 24 million names on various do-not-call lists, including lists of 16 states, the Direct Marketing Association, and its internal company-specific lists. The changes contemplated by the Proposal therefore would directly affect the maintenance and operation of these lists and Household's telemarketing policies and procedures.

A. COMPANY-SPECIFIC DO-NOT-CALL LISTS

The Commission's original Rules and Regulations Implementing the Act (the "Rule") required telemarketers to establish company-specific do-not-call lists to record a called party's request not to receive future telephone solicitations for a period of ten years. The Proposal seeks comment on whether this framework is still workable.

1. **Advantages of the company-specific lists** (paragraph 16): In addition to the advantages listed in the Proposal, the company-specific framework that was originally adopted has several benefits. First, it allows consumers maximum choice by allowing them to request no solicitations from some telemarketers and to continue to receive solicitations from other telemarketers. Many consumers prefer to receive product and service information by telephone, which allows an opportunity to ask specific questions and learn more about the product, an opportunity that is lacking in direct mail and on Internet web pages. This framework also allows telemarketers to maintain targeted calling lists with individual consumer preferences, an advantage that would be limited if an indiscriminate blanket do-not-call list was imposed. In addition, this framework allows companies to save costs related to calling consumers who do not want to receive phone calls from that company. The current do-not-call framework also spreads the costs of recording and implementing consumer requests; each company maintains a list, and while some consumers undoubtedly appear on more than one such list, it is clear that the company-specific lists are smaller and more efficient to maintain for each company. These advantages, *as* well as the advantages listed in the Proposal, remain valid.

2. **Effectiveness of the company-specific approach** (paragraph 14): The current process works well, by maximizing consumer choice and by making the do-not-call process efficient for each company. In particular, the do-not-call request can be requested by consumers and implemented by companies at the time when it is most likely to be raised (during a telemarketing call). We honor such requests and we expect any third parties conducting telemarketing phone calls on our behalf to honor such requests. If some telemarketers hang up before a customer can request do-not-call status, it is likely a rare occurrence, and such practices should be investigated specifically and appropriate steps should be taken with respect to the implicated parties, as opposed to penalizing all telemarkelers for the abusive practices of a few errant telemarketers.

As with any process, there is a risk of clerical error (recording an incorrect name or phone number and thus calling a consumer who had already expressed a do-not-call request) and there is also a necessary delay in implementing requests, due to processing time and the use of batch processing of such requests. To limit the risk of clerical error, we would prefer to be able to require additional information from the consumer in order to record and retain the consumer's do-not-call request effectively, such as the consumer's full name, address, phone number, and account number if applicable. Without more specific identification information, it may be difficult to fully implement a do-not-call request in all situations. With respect to batch processing, a consumer who requests do-not-call status on November 11, for example, may already be on a calling list that was developed on November 10 and will be in use for a reasonable period thereafter. Even though the November 11 request will be placed in the

company's do-not-call database within a reasonable processing time, it is expensive and inefficient to update every calling list every day in order to input requests of that day. Significantly, however, a national do-not-call list would only exacerbate these limitations. A national all-encompassing list would increase the likelihood of clerical errors and potentially inaccurate information. A national list would additionally lengthen the time for implementing requests, due to the additional processing steps that would be required for processing a national list arid distributing it to thousands ofcompanies on a periodic basis.

3. **Should companies be required to provide a toll-free number or website for consumers to register a do-not-call request?** (paragraph 17): This should remain optional for companies. The Commission should encourage, but not require such efforts. If necessary. the Commission could require telemarketers to take do-not-call requests by phone call to the company's regular toll number or to a toll-free customer service number if the company already has a loll-free number. It would be overly expensive and should not be necessary to require coinpanics to obtain new toll-free numbers. In addition, the costs of developing a web page for do-nor-call requests is burdensome and should not be required. While the cost of designing a web page itself is relatively inexpensive, the cost ofcreating an interactive web page at which consumers could register preferences and those preferences could be recorded, could be extteniely expensive, probably three to five hundred thousand dollars for a firm that maintains several websites and conducts several different product lines. In addition, the cost of extracting the names from the web page and transferring them to the appropriate do-nol-call database would also run into the several hundred thousands ofdollars. These may be exemplary efforts, but would be too costly. given the little increased benefit they would providc. Companics should be pel-niitted to develop them on their own, without governmental mandates.

4. **Should companies be required to confirm the processing of do-not-call requests?** (paragraph 17): This proposed requirement is unnecessary and burdensome. Indeed, it may be practically impossible, because many consumers do not or will not provide their mailing address to telemarketers at the time of requesting the do-not-call status. Again, the Commission could encourage such efforts, if necessary, but allow companies flexibility in the means designed to achieve the recommended result. Some companies may be able to confirm the processing of a do-not-call request in writing as part of a normal mailing to its customers. Other companies may have a voice messaging system that could easily and cheaply be adapted to allow customers to ascertain their do-not-call status. Because different companies have different processes and systems. it is important to allow maximum flexibility in attempting to offer greater information to customers.

5. **Should companies be required to process requests within a specific period of time:'** (paragraph 17): The Commission could require requests to be implemented within a "reasonable" period of time and could specify that a reasonable time period is dependant on the facts **and** circumstances related to the telemarketer's type of business, the nature of the telemarketer's relationship with the consumer. the fomi of the request, and the nature of tlic telemarketing call. If the Commission needs to Indicate a generic specific rime period that would he reasonable in most facts and circumstances. we suggest 90 days.

It is important for the Commission to understand that there are two time periods involved here. Any mandated maximum time for implementing a request should accommodate both time periods. The first is the time period for the consumer's request to proceed from the consumer to a database or list (the "Input" period). The second time period is the time for all calling lists that are derived to be processed against the do-not-call database (the "Output" period) . Typically these calling lists are generated every month or two, but could be generated for a longer time period. The 90-day period we suggest is based on thirty days for input, thirty days for output, and thirty days for the company to use a calling list that was previously processed against the do-not-call database.

In any event, good telemarketing practices would include informing consumers, at the time a request is made, to allow time for processing the consumer's request, and that the consumer may receive another call from the same company before the request is completely processed. This would also be good information for the Commission and other public agencies to provide to consumers in general publications about the Rule.

6. **Is** ten years a reasonable length **of** time for maintaining **opt-out** requests? (paragraph 17): It is common knowledge that approximately 20% of American households move every year and that on average, each household moves approximately every five years. As a result, phone numbers have a life span of approximately five years. Therefore, five years would be an obviously reasonable time period for maintaining opt-out requests. Two or three years would also be a reasonable time period, because many consumers' preferences will change over time as their business relationships and interests change. Phone numbers may be changed for reasons other than moving, for that matter. Consumers may request a phone number change for security reasons. or to obtain an unlisted number. In the last several years, many consumers have had their area codes change. Although some telemarketers have been able to change area codes with respect to phone numbers already included in their do-not-call databases, it is not clear that all telemarketers have this opportunity, and many consumers may request do-not-call status again, *thus* clogging up the system in general. We suspect that 20-40% of the phone numbers in companies' do-not-call databases are outdated numbers. Household and its affiliates have over X.4 million phone numbers in its consolidated do-not-call database (not counting names on state do-not-call lists and the Direct Marketing Association do-not-call list). Therefore, between 1.6 million and 3 million phone numbers are outdated. Maintaining these numbers for a ten year period is excessive. inefficient, and costly. It also results in "over-compliance." where telemarketers are not able to contact consumers with new phone numbers (which appear on the list because a previous subscriber with that number requested do-not-call status), even though the consumers with the new numbers have never requested the do-not-call status.

Although we do not support a national do-nor-call list unless it is adopted along with clear preemption of state do-not-call lists, one potential advantage to a national list is that when someone moves and obtains a new phone number. the changes in phone numbers could bc processed in such a list. That is, the administrator of the list would also be responsible for tracking moves. such as by communicating with the telephone carriers when old phone numbers are cancelled. The telephone carriers clearly have easy access to cancelled phone numbers and could be required to notify the administrator of a national do-not-call list when a number is

cancelled. Currently the state do-not-call lists that have been acquired by Household have over 0 million phone numbers collectively. Again, if just 20% of those numbers are outdated, over 1.8 million numbers clog the system unnecessarily.

7. **Hang-up** and dead air calls (paragraph 15): The Commission suggests that automatic dialers, predictive dialers, and answering machine detection technology may result in "hang up" or "dead air" calls in which the recipient cannot request do-not-call status, thus arguing that a national do-not-call list is appropriate. The Commission, however, is assuming that "hang up" calls occur frequently and that they emanate from telemarketing companies. If "hang up" calls are frequent enough to warrant concern, the proper response is to attempt to minimize the frequency of such calls through technology and compliance (see discussion below at number 14). The ideal. for both companies and consumers, would be to ensure that all answered calls result in a person-to-person conversation, during which the company can make a telemarketing sale and the consumer can request do-not-call status if he so chooses. Good management of the process. without cumbersome technical and operational restrictions, could help ensure this goal.

8. Should the company-specific list requirement **be** retained if **a** national list **is** adopted? (paragraph 16): We believe that there is only one justification to adopt a national do-nor-call list: in order to streamline the telemarketing process for companies and consumers, by eliminating duplicative and inefficient state-required lists. The current process for company-specific do-not-call lists has worked well for both consumers and companies. Many slates, however. 3s outlined by the Proposal. have adopted or are about lo adopt state-specific do-not-call lists of consumers residing in the state who have requested that no telemarketer contact them. Were it not for the presence of these state-mandated state-specific lists, there would be little or no justification for imposing a national do-not-call list (see discussion below at number 24 regarding a proposed national do-not-call list).

We do not support a national do-not-call list unless the Commission clearly preempts all state do-not-call lists. Nevertheless, if a national do-not-call list is adopted, and if state do-not-call lists arc simultaneously eliminated, it would not be necessary for companies to maintain company-specific do-not-call lists for non-customers. **(As** discussed in number 25 below, companies should continue to maintain company-specific do-not-call lists of customers who have requested no calls). At the same time, the Commission should provide an implementation transition time period in this regard in order to recognize and honor the expectation of consumers who have previously requested do-nor-call status with companies. We recommend that for a period of about one year, companies would be required to continue to utilize their existing do-not-call lists for placement of telephone solicitations, although during this period companies would not be required to place any new names or phone numbers of non-customers on the list. In this way, companres would be honoring existing do-not-call requests (which would satisfy the consumer expectation that the company will not solicit them by phone) but would not *be* required to add new do-not-call requests (for non-customers) to their list. During this implementation period, companies, the Commission. and other public agencies would inform consumers that the company-specific lists will become invalid (with respect to non-customers) and that such consumers could record do-not-call requests only on a blanket or nationwide basis

After the year of implementation, the company-specific do-not-call lists (with respect to non-customers) would be invalidated and companies could look solely to the national list for compliance.

9. **Should the definition of "established business relationship" be changed?** (paragraph 20): The Commission seeks comment on whether a company that has a relationship with a customer based on one type of product or service should be prohibited from contacting that customer if he or she is on a national do-not-call list in order to market a different service or product. Such a regulation could never be drafted with clarity, due to the huge variety and similarity in types of products and services offered in the market. For example, could Internet cable-based service be considered the same or a different product from Internet service provided via telephone lines? Additionally, could a credit card be considered the same product as a debit card'? Obviously, there are legitimate arguments on both sides of those questions. As a result, we encourage the Commission to avoid narrowing the business relationship definition.

Beyond the inherent difficulty in drafting such a requirement, it would unnecessarily hamper businesses from offering products that are of value to their existing customers, and it would prevent customers from hearing about such opportunities. Most states that have adopted state do-not-call lists have provided that existing customers may be contacted for marketing purposes. which recognizes the important business relationships that have been established and the value in maintaining and continuing those relationships.

B. NETWORK TECHNOLOGIES

10. **Call blockinp and caller ID technology options** (paragraph 21): The Commission notes that the Rule adopted in 1992 did not require a special area code or telephone number prefix that would allow call blocking through network technologies. We believe this was the correct determination and that there are no persuasive reasons to change the determination now. The cost of developing a special area code is prohibitive. It would require multiple lines and multiple area codes or prefixes for companies that conduct servicing functions via the telephone and also conduct marketing campaigns via the telephone. For that matter, it could require significant changes in operations and management. Currently, one employee can perfonn several different functions by telephone. But, if this rule were adopted, employees would hc [required to use more than one telephone in order to place telemarketing calls from one area code and service calls from another area code. This is an unnecessary structure, particularly since there are less expensive and burdensome ways to assist consumers in avoiding unwanted telephone calls.

11. **Should caller ID requirements be adopted?** (paragraph 22): We support requiring the name and phone number of the caller to display on caller ID screens for telemarketing calls, but only where the telemarketer is using telephone equipment that is capable of transmitting such information. To the extent that such equipment is used. the phone number transmitted for caller ID should be a general call-back number for the business, and not the actual phone number of the person or employee who placed the call. In adopting caller ID

requirements, the Commission should keep two things in mind. First, it is technologically impossible for many telemarketers to transmit caller ID information due to the type of telephone equipment thcy use. Several of the states that have caller ID blocking restrictions have recognized this and have exempted telemarketers with this type of equipment from state blocking prohibitions. Second. many consumers do not have caller identification technology, and may not wish to pay, or may not be able to afford. the charges assessed by telephone carriers for receiving the caller identification display. Therefore. the ultimate effect of any caller ID requirements would be limited.

C. AUTODIALERS

12. Should the delinition **of** "automatic telephone dialing system" be changed? (paragraphs 23-24): While we support the Commission's efforts to restrict the use of technology that is used to randomly or sequentially generate and call telephone numbers, we believe the Rule's current definition for "automatic telephone dialing system'' is too broad. In particular, the Commission should provide that an "automatic telephone dialing system" does not include a machine that dials telephone numbers from an existing database that includes telephone numbers of a company's existing customers or those of its prospects, so long as such numbers are pi-ocessed against applicable do-not-call lists. Certainly when used in this manner, this technology docs not raise the concerns that prompted the adoption of the Commission's autodialer rule (i.e., prevention of randomly dialed calls to a hospital room, emergency line, or a telephone for which the called party is charged for the call). Dialing machines are efficient and lower the costs of providing goods and services to consumers and legitimate use of such technologies as set forth above should not be unduly restricted.

13. Should predictive dialers be included within the definition **of** "automatic **telephone** dialing svstem"? (paragraph 26): Predictive dialers are simply dialing machines with a computer program attached that assist in predicting the most likely time the consumer can bc contacted. These machines are not conceptually different from dialing machines without the predictive computer program attached. It is not necessary for the Commission to include predictive dialing in the definition of automatic telephone dialing system. The primary function of a predictive dialer is to call a given set of telephone numbers at a rate that enables a sales pcrson to be available to handle the call when the consumer answers the phone. The main rationale of the Commission's autodialer rule, which is to prevent autodialers from randomly calling an emergency line, hospital room, or a telephone for which the called party is charged for the call, docs not appear to be relevant in the context ofpredictive dialers. Predictive dialers are used to dial numbers the telemarketer *intends* to call, not randomly generated numbers which might include hospital rooms

14. Should the Commission mandate a maximum amount **of** abandoned calls? (paragraph 26): We believe that good telephone dialing management would avoid most instances of "abandoned" calls. where the recipient of the call answers but is not connected by the dialing machine to a representative ofthe caller within a short period of lime. Thercforc. a regulatory maximum is unnecessary and would unduly hamper businesses. Beyond the lack of

need Tor a maximum standard, it is clear that setting a standard and enforcing it would bc extremely difficult. Interestingly, California adopted legislation requiring a maximum for abandoned calls, but the regulatory body charged with setting the maximum has. to our knowledge, been unable to establish a maximum yet.

As an alternative to setting a maximum, we suggest that the Commission establish voluntary guidelines. This would give businesses and consumers maximum flexibility to adapt to new technologies as they develop. In addition, it would help to level the playing field for telemarketers while permitting flexibility. A voluntary guideline would help establish common telemarketing management practices and would help prevent telemarketers from setting their predictive dialers at speeds that are either too "fast" (which is efficient and reduces the costs of each call, but results in more abandoned calls) or too "slow" (which reduces the incidence of abandoned calls. hut raises the cost of each call). The Commission could also recommend that the caller provide a rape recorded message if a representative ofthe caller is not available within a short period of time after the call is answered. The Commission could also consider prohibiting the use of caller ID blocking for calls placed by an automatic dialing machine, although the Commission should recognize that not all telemarketers have equipment capable of transmitting caller ID information (see our comments in number 11 above).

If the Commission does decide that a mandatory abandoned call maximum is necessary. tlic Commission should not attempt to hold the industry to a standard that does not allow for the reasonable use of predictive dialers. In setting such a standard, the Commission should study current industry practices to determine an appropriate rate of abandoned calls. Such a rate should be crafted so that it is flexible enough to allow businesses to use predictive dialers in a responsible and meaningful way, while also preventing irresponsible use of predictive dialers.

15. **Should answering machine detection be prohibited?** (paragraph 27): We recommend that the Commission consider voluntary standards in this regard in order to provide businesses and the Commission with maximum flexibility. Answering machine detection is an automatic dialing machine with a detection device listening for either a person saying "Hello" or continuous noise (indicating that an answering machine has answered the call), so that the caller can either leave a message on the answering machine automatically, or terminate the call without leaving a message. There is no need to eliminate this technology. Indeed, elimination of answering machine detection would have to result in the elimination or total revamping of many iclcphonc answering machine systems and companies' internal systems and procedures, and would be very costly as a result.

D IDENTIFICATION REQUIREMENTS

16. **Is the identification requirement applicable to predictive dialing'?** (paragraph 29): The Commission notes that during a telemarketing call, callers must identify the caller's name and phone number or address and that the Federal Trade Commission (thc "FTC") has suggested that this requirement applies even if the call is abandoned prior to completion. Certainly the FTC would not take this position if a telemarketing call were abandoned by tlic

consumer by a manual hang-up, or if the company experienced a system problem, such as an electrical storm or surge. Likewise, a system limitation causing some calls to be abandoned should not be a violation.

E. ARTIFICIAL OR PRE-RECORDED VOICE MESSAGES

17. **Informational calls** (paragraph **31):** We believe that service calls and calls about information, processes, and services offered by the caller to existing customers are valid business purpose calls that should not be limited, even if the caller may solicit the purchase of an additional product or service during the call. Many customers appreciate such calls and value learning about additional products and services.

18. **Is the definition of "established business relationship" sufficient?** (paragraph 34): The Commission notes that artificial or prerecorded messages may be sent to persons with whom the caller has an established business relationship and inquires whether the definition is sufficient. The exclusion for established business relationships is workable and it is also critically important in order for companies to service their existing customers and provide products and services that are of value to their existing customers. We do not oppose clarifications to this definition, particularly with regard to the concept of an "inquiry," although we do not feel that additional clarifications are necessary. Most companies maintain a contact database of existing customers and have a fairly common sense approach to including individuals on this list. Such lists could clearly include, for example, persons who have applied for a loan or credit card by completing an application, persons who have signed loan documents, persons who have registered on a website to receive more information about a product, or persons who have purchased a product. In trying to clarify the definition, the Commission should be careful not to take too narrow an approach, because there are many different businesses and industries that utilize widely different business process methods. Clearly no single narrow definition will suffice for all industries, and therefore a general approach is better

19. **Should companies be required to honor the do-not-call requests of its existing and former customers even if they conducted business with the company?** (paragraph 35): We honor the do-not-call requests of our existing customers with respect to telemarketing calls, and we believe that most companies do so. Requiring customers to discontinue their business relationships in order to validate such requests is unduly burdensome on consumers, particularly when the discontinuation of the business relationship might involve high costs, transfer fees, or similar expenses in transferring essential services, such as telephone service or utility services. In some cases, consumers do not have any flexibility in arranging for utility services (such as cable television) and should not be required to endure call after call from the cable company just because they want to enjoy cable programming offered by the company.

F. TIME OF DAY RESTRICTIONS

20. **Are current calling time restrictions sufficient?** (paragraph 36): We believe that current calling time restrictions are sufficient. Indeed, many customers and companies have come to rely on them for scheduling activities, and there is no valid reason to change them

G. UNSOLICITED FACSIMILE ADVERTISEMENTS

21. **Should the established business relationship exemption be changed?** (paragraph 39): We believe that relatively few companies send facsimile advertisements to individual consumers and that most use is concentrated on business recipients, where consumer privacy concerns are not present. Nevertheless, some businesses do advertise by fax to existing customers arid there is no valid reason to eliminate this practice everywhere. We believe that companies that do advertise to individual consumers should be required to honor a "do-not-fax" request in the same way that it is required to honor a "do-not-call" request from an existing customer.

H. WIRELESS TELEPHONE NUMBERS

22. **To what extent does marketing to wireless numbers exist today and should it be regulated?** (paragraphs 43-46): As the Commission notes, many consumers use their wireless numbers as their primary telephones. As a result. the Commission needs to revisit the rules applicable to wireless phones. We urge the Commission to permit calls (including calls placed by an automatic dialing machine and calls involving a prerecorded message) *to* any telcphone number provided by an existing customer, even if the number is a wireless number. The Commission should consider all recent technologies in finalizing the Proposal. For example, the easy transportability of numbers from wireless to land phones and from land phones to wireless phones, along with call forwarding and other technologies, are beginning to blur the distinction between wireless phones and land phones. As a result, the Commission should acknowledge that in most cases, wireless phones should be treated like land phones.

I. ENFORCEMENT– PREEMPTION OF STATE LAWS

23. **Should the FCC preempt state telemarketing laws?** (paragraph 48): The adoption of a national do-not-call list is justified only if the FCC exercises its preemption authority and preempts state do-not-call lists. Clearly telemarketing is an interstate activity (although there might be some limited justification for a state to regulate telemarketing that takes place from companies located within its borders to consumers located within its borders). Aside from the narrow possibility of such solely inrra-state activity, telemarketing is nationwide and should be governed by one set of rules. not a patchwork quilt of over 51 different do-not-call lists and procedures.

J. NATIONAL DO-NOT-CALL LIST

24. **Should a national do-not-call list be adopted?** (paragraph 49): As stated previously, the Commission should establish a national do-not-call list only if it preempts existing state do-not-call lists and thus minimizes the regulatory burden associated with a multiplicity of do-not-call lists. Otherwise, the Commission's list would just be the 51st list for each telemarketer to consult. on top of its proprietary do-not-call list, state do-not-call lists. and voluntary lists such as the Direct Marketing Association's do-not-call list, not to mention any list maintained by the FTC pursuant to its proposed rule. If the Commission and the FTC both adopt a list. there could be 55 or more lists to be managed prior to conducting a telemarketing campaign. There is clearly no additional benefit to be gained from a multiplicity of such lists. If there is a single list, however, there is a benefit to consumers (only one source to contact) and telemarkelers (only one list to acquire). Without preemption, the adoption of yet another list or two would be terribly confusing and inconvenient to consumers (who would have to figure out which list(s) to contact) and telemarketers (who would have to acquire many, many lists. containing different information and available in inconsistent formats).

Wc support the adoption of a single national do-not-call list (preempting all state do-not-call lists) along with a one-year implementation period. during which both the state lists and the company do-not-call lists would be phased out. Consumers would be instructed to place their names and telephone numbers on the national list sometime during this one-year period, after which the state lists and the company do-not-call lists would be invalidated. During this period, the state lists would be provided to the administrators of the national list and would be included therein, so that only one list would be used. This would ensure that consumers who had placed their names on state do-not-call lists would have their expectations met, during the one-year implementation period. After that period, the state lists would be excised from the national list and only consumers who had contacted the administrators for the national list would be included

Further, we suggest that the most appropriate administrators for the national do-not-call list arc the telephone carriers who issue telephone numbers to subscribers. The carriers have tlic most direct contact with subscribers, at the point in time at which consumers are most able lo consider whether or not they wish to receive telephone calls for marketing purposes. Importantly, carriers already have the technology necessary to withhold consumer information from lists provided to telemarketers today. The only additional process needed would be to provide the do-not-call preference generally to a central source for distribution to companies that conduct telemarketing. But, in addition, telephone carriers could indicate (on calling *number* lists that the carriers provide to telemarketers) a flag next to any name and accompanying telephone number where the customer did not want to receive telephone solicitations.

Clearly the Commission and the FCC should coordinate their efforts in this regard. There is no reason to have two national do-not-call lists. Consumers should not be put in the difficult and perplexing position of having to determine which telemarketers are regulated by which government agency. It would be like having two federal agencies to issue passports, or two agencies to collect taxes and audit tax returns. Consumer confusion will be a concern with just one national list. but it would be rampant if there are two national do-not-call lists.

25. **Existing** business relationships (paragraph 58): Any national do-not-call list should not apply to a business's calls to its existing or former customers. If a customer has informed the business not to place telemarketing calls to the customer, we believe the business should honor that request. The proposal of the FTC to require customers to provide express verifiable authorization in order for companies to contact their own customers is a restrictive "opt-in" proccdurc that is expensive and cumbersome. This would modify the origination process governing customer relationships. An "opt-out" approach is far more efficient and less intrusive on businesses and consumers. The "opt-out" approach provides the same benefits as the "opt-in" approach (i.e. customers who do not want to be called can register that preference) with far less expense and hassle. It also allows a do-not-call request to be made at the likely point of contact, during a telephone call.

26. Interplay with existing state do-not-call lists (paragraphs 60 and 65): The Commission acknowledges that the states have widely varying methods for collecting data, fees charged, and types of entities covered by the state requirements. The variety of registration, fees, exemptions, and prohibitions is staggering. **As** a result of these widely varying requirements. tlic Commission's unusual proposal, that consumers in a state that maintains its own do-not-call list should be prohibited from entering the national do-not-call list, is unwise and inconsistent with the Commission's goals. The best way to coordinate efforts with the states is simply to provide that do-not-call processing is a national service, much like income tax collection, regulation of bandwaves, issuance of passports, and coining money. Congress does not allow stales lo issue passports that require additional information items. Congress does not allow states to coin money if they don't like the federal coinage system. The idea of states and the federal government jointly administering the do-not-call regulatory process is unworkable. We do recommend **a** one-year transition period (see comments at number 24 above) during which both state and national do-not-call lists would be utilized, in order to minimize consumer confusion and allow for an orderly transition.

27. Enforcement **of** state do-not-call lists (paragraph 64): The adoption of various different state do-not-call lists has nothing to do with "particularized circumstances of consumers and telemarketers" in those states, as the Commission suggests. Telephones and consumers throughout the nation do not have any particularized circumstances. State do-not-call lists were developed as a result of the political process in various states. The Commission should understand that telephone calling is a national enterprise and what most serves the needs of consumers and businesses alike is a unitary process, no matter where calls are made and received. Although some state attorneys general may have adopted an interpretation that they have the ability to enforce their intrastate laws against telemarketers located in other states, that proposition has not been fully tested and is not necessarily going to succeed with respect to all types oftelemarketers. It might be more successful with respect to telernarketers who call from other states but also have locations **or** other contacts in the state attempting to enforce its laws. This type of selective enforcement and discriminatory regulation is highly inefficient and should be pre-empted under the Commission's current regulatory authority already set forth in the Act.

Clearly, the Commission should not adopt a national do-not-call list unless it also preempts all state do-not-call lists in full, thereby promoting a strong, national economy with more flexibility and with less restrictive. unnecessary, and burdensome state economic regulations, as will help our nation better compete in the global economy in the early part of the twenty-first century.

We wish you well in the important task of completing the Proposal. Thank you again for this opportunity to comment.

Sincerely yours.

Julie A. Davenport
Deputy General Counsel

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